



Owuor v Backlays Bank of Kenya Limited (Civil Application E174 of 2024) [2025] KECA 616 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KECA 616 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E174 OF 2024
LK KIMARU, JA
MARCH 28, 2025**

BETWEEN

DENIS AMOLO OWUOR APPLICANT

AND

BACKLAYS BANK OF KENYA LIMITED RESPONDENT

(Being an application for extension of time to file and serve the record of appeal from the Judgment of the High Court of Kenya at Homa Bay (Kiarie Waweru Kiarie, J) dated 9th March, 2022. in HC Civil Appeal No. 16 of 2020)

RULING

1. The Applicant, Denis Amolo Owuor has moved this Court by Notice of Motion made pursuant to Rule 4 of the Court of Appeal Rules 2022, seeking orders from this Court to be granted leave to file and serve the respondent with the memorandum and record of appeal out of time. The application is supported by the grounds stated on the face of the application and the annexed affidavit of the applicant.
2. In summary, the applicant states that he was aggrieved by the judgment of the High court made on 9th March, 2022. After the delivery of the said judgment, he lodged the notice of appeal indicating his intention to appeal the said decision on 16th March, 2022. He served the respondent within the stipulated period of seven (7) days provided as by the Rules. He did not however, file the record of appeal of appeal within time. He explained the reasons for the delay to the fact that he was not able to obtain certified copies of the proceedings and judgment in time despite making the request to the trial court on 14th March, 2022 for the same. The applicant states that the respondent will not be prejudiced if the Court grants the order craved for of extension of time.



3. The respondents were duly served and notified of today’s hearing date by the court. The respondents did not file a replying affidavit in opposition to the application. Neither did they filed any written submissions. In the circumstances therefor, the application is unopposed.
4. Rule 4 of this Court’s Rules grants this Court unfettered discretion to extend time for any step stipulated to be done within a specified period by the Rules. The discretion is, however, required to be exercised judiciously and not capriciously or whimsically. This Court in *Fakir Mohammed v. Joseph Mugambi & 2 others* [2005] eKLR held thus:

“The exercise of this Court’s discretion under Rule 4 has followed a well beaten path. As it is unfettered, there is no limit to the numbers of factors the Court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matters raises issues of public importance- are all relevant but not exhaustive factor.”
5. In the present application, the applicant attributed the delay in lodging of the record of appeal in time to the 1st appellate court’s delay in availing the certified copies of the proceedings and judgment. The applicant would have been spared the necessity of filing the present application if he had copied the letter bespeaking of the request for certified copies of the proceedings and judgment to the respondent as provided under Rule 84(2) of the Court of Appeal Rules, 2022. That’s however water under the bridge. This Court is persuaded by the reason that he applicant put forward for the delay in lodging the appeal in time. The typing and certification of proceedings is a matter that was beyond the control of the applicant. As the respondent did not oppose the application, it is evident that the respondent cannot be prejudice by this Court granting the prayer sought by the applicant in this application.
6. In the premises therefor, the application is allowed. The applicant is granted leave to file and serve the record of appeal out of time. The same shall be filed and served within twenty- one (21) days of today’s date. There shall be no order as to costs.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF MARCH, 2025.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

